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ABSTRACT

While it is informative to trace the vicissitudes to which the First Amendment has been subjected since 1791, it is obvious that as far as schools are concerned, the courts have interpreted freedom of speech and the press in a limited way. For example, the courts have ruled that boards of education may remove books from school libraries on the grounds that those with the authority to place the books on the shelves in the first place have the authority to remove them. Lee Burress, who has studied censorship problems encountered by English teachers for over 20 years, reports the following figures: in 1966 just over 20% of high school librarians who responded to his survey reported some form of censorship pressure. By 1982, that percentage had climbed to 34. In light of these and other disturbing figures, the National Council of Teachers of English has joined other professional organizations in forming a coalition, the Academic Freedom Group. In addition, the council encourages the efforts of its Committee against Censorship and has published such useful works as "The Students' Right to Read" and "The Students' Right to Know." Freedom of speech is the "most beautiful thing of the world" and teachers must defend it at all costs. (HOD)

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THE FIRST AMENDMENT, SCHOOLS AND THE PRESS: A CURRENT ISSUE

More than 2,000 years ago Diogenes said, "The most beautiful thing in the world is freedom of speech." Not everyone, we can be sure, agreed with him. From Plato's call for moral censorship to protect the young, to Julius Caesar's burning of the Library of Alexandria in 48 B.C., to the public conflagration of William Tyndale's translation of the Bible in 1525, history offers a multitude of examples of censorship for moral and political good. Not to be out-done by the censors, others have persisted in their defense of the "most beautiful thing in the world." In the Seventeenth Century, for example, in the midst of a Puritan England which for the first time in history saw "obscene" materials become illegal, John Milton argued for freedom of speech and the press in his brilliant Areopagitica.

We would do well to review a couple of Milton's several points in that almost flawless Ciceronian oration: That censorship has always been a concomitant of tyranny; that censorship inevitably strikes at the good as it strives to eradicate the evil; that cnsorship is a hindrance to the search for truth, and that truth shall prevail if it can grapple against error without fetters.

As great ideas freely expressed are wont to do, Milton's arguments survived and bore fruit in eighteenth century America. Surely Jefferson's and Madison's scholarly appreciation of Milton was not lost as they framed the Constitution. Reflecting on the "most beautiful thing in the world," Madison wrote, in defense of the amendment which was to become our first--and most prized, "Nothing could be more irrational than to give the people power, and to withhold from them information without which power is abused. A people who mean to be their own governors must arm thelmselves with power which knowledge gives. A popular

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government without popular information or the means of acquiring it is but a prologue to a farce or a tragdy, or perhaps both." And so we have the First Amendment--"Congress shall make no law. . .abridging the freedom of speech, or of the press. . . ."

While it is informative--and sometimes infuriating--to trace the vicissitudes to which the First Amendment has been subjected since 1791,it is obvious that as far as schools are concerned, the courts have interpreted freedom of speech and the press in a limited way. To summarize a few of those rulings, the courts have held that:

1. A teacher cannot use the classroom as a public forum to discuss issues other than the subject(s) the teacher is contracted to teach.

2. School employees have a First Amendment right to use profanity in the classroom only if such use can be directly tied to the lesson being taught.

3. Boards of education may remove books from the school's library on the grounds that whoever has the authority to place the books on the shelves in the first place has the authority to remove them.

4. When school publications are used as a public forum, articles cannot be censored unless there is some threat to the institution.

5. A school-sponsored publication cannot be censored unless students are provided with a definition of the term "distribution," prompt approval or rejection of what is submitted, specifications of the effect of failure to act promptly, and an adequate appeals procedure.

6. Newspapers that are libelous or obscene may be subjected to some prior censorship before publication or distribution is allowed by school officials. The school, however, must have policies and rules that establish a procedure by which the administration and student editors can determine whether a newspaper or article may be published and distributed.

7. Subjects to be included in school newspapers, or other such related materials, may be screened for publication according to rules previously established by the board for such purposes.

8. The students' First Amendment rights must be balanced with the state's interest being served by the prohibition of an article or publication of a newspaper, and students who violate reasonable policies may be disciplined. (K.D. Moran and M.A. McGhehey, The Legal Aspects of School Communications, 1980)

Germane to those of us "on the firing line," or behind the desk--whichever you prefer--is the issue of academic freedom, the freedom to search for and to

teach the truth, free of constraints on content or methodology. While the notion of academic freedom has enjoyed considerable prestige in colleges and universities--although current efforts of Accuracy in Academia squads in college classrooms threaten the status quo, the Supreme Court of the United States did not recognize academic freedom as receiving constitutional protection until 1952. In a now classic dissent, Justic Douglas stated:

> I cannot for example find in our constitutional scheme the power of a state to place its employees in the category of second-class citizens by denying them freedom of thought and expression. The Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than the teacher. (Adler v. Bd. of Education)

Seventeen years later, in Tinker v. Des Moines Independent Community School District, the Court's majority affirmed Justice Douglas's position. It stated, "First Amendment rights applied in light of the special characteristics of the school environment are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." These, of course, were and are heady words. However, the Court warned that the "rights of speech and association may be limited, because of the unique nature of a school. One cannot exercise this right to the extent that it creates a disruption." More often than not, what disruptions occur are caused by forces outside the school. Certainly attempts at censorship, supported by various special interest groups, have dominated the area of academic freedom in recent years.

Just how serious is the problem of censorship? According to the Office of Intellectual Freedom of the American Library Association, between 1966 and 1975 only about 100 incidents occurred a year. By the late 1070's, however, 300 incidents a year were reported. Then, in 1981, the rate exploded to 1,000 cases a year. The historic Island Trees decision of 1982 drew attention to the problem; while eager supporters of the case believe the decision clarified a crucial point, others think that it provides no absolute guidelines. Justice

Brennam's plurality did find that students' First Amendment rights were more deserving of protection in the school library than in the classroom. It implicitly affirmed the right of school boards to remove books, based on being "educationally suitable" or "pervasively vulgar." As it stands today, interested parties usually turn to a growing body of case law pertaining to the issue of censorship. The President's Council case, the Adams case, the Bicknell case, and the Cary case all support in one way or another the rights and discretion of school boards over the rights of students and teachers in curriculum matters. On the other hand, cases such as Minarcini, the Right to Read Defense Committee, the Salvail, and the Pratt have found students' constitutional rights more deserving of protection than the rights of local boards. Perhaps because the issue appears to be grounded at best on quick-sand, the reported cases of censorship continue to rise.

Lee Burress, who has studied censorship problems encountered by English teachers for over twenty years, reports these figures: In 1966 just over 20% of the high school librarians who responded to his survey reported some form of censorship pressure. By 1982, Burress continues, that percentage had climbed to 34%. In addition, Burress notes a relatively high percentage in 1982 reported "a locally organized group of library and curriculum critics" as responsible for the pressure--from less than one percent in previous surveys to 17% (Burress, Dealing with Censorship, 14; Newsletter on Intellectual Freedom, Jan. 1983).

Equally unsettling is the latest report by the People for the American Way in its annual study released in September 1985. It recorded a 66.6% rise over the past year in documented incidents in which citizens sought to censor "an array of courses, textbooks, teaching methods and materials" and "a wide assortment of books, plays, and films." Further, the new report notes that "more than 42 percent of the challenges that were directed at instructional

materials resulted in removal or restriction of the material" (National Council of Teachers of English Councilgrams, Nov. 1985.).

In light of these disturbing figures, the National Council of Teachers of English--long a supporter of academic freedom and opponent of censorship--has joined other professional organizations in forming a coalition, the Academic Freedom Group. As promulgated by the Support for the Learning and Teaching of English Committee (SLATE) in 1983, the Council "and its state affiliates have, as one of their major concerns, matters related to censorship and the teaching of English language arts. The Council is, for example, a member of the National Coalition Against Censorship; it encourages the efforts of its Committee against Censorship; it publishes many useful works,"such as The Students' Right to Read (1982), and The Students' Right to Know (1982),"that are designed to aid members to cope successfully with censorship problems; and it has passed resolutions opposing censorship. The 1981 resolution reads in part: 'Resolved, that in the face of increasing censorship the members of the National Council of Teachers of English reaffirm the student's right of access to a wide range of books and other learning materials under the guidance of qualified teachers and librarians; and that all English teachers be urged to resist censorship by employing points of view and approaches recommended in The Students' Right to Read and other NCTE publications on censorship." NCTE has also developed stategies for action which include written selection policies for all media, print and audio visual materials; procedures for the reconsideration of instructional materials; and instructional rationale forms.

Further, in a February 1985 update, the Committee Against Censorship through the SLATE Newsletter reviewed issues of current interest. It warned of the "quiet bowdlerization of many high school literature texts," for example, and the clear and present danger in the relationship between the users of books and the publishers of books. The Committee noted that "book publishing has become a growth industry; one publisher buys up another; nonpublishing companies

have purchased publishers. Increasingly, these companies have little respect for traditional attitudes toward literature or interest in the user." The Committee, in addition, speculated about the possibility of a selective boycott of those publishers who "kowtowed to the Tennessee market or the Texas market," so changes might occur. The comments by the Committee on Censorship reflect current worries of practicing English teachers. Indeed, in staff rooms, conventions, conferences, every where English teachers gather, the state of textbooks seems foremost in their minds. Many, if they are allowed to choose, prefer separate paperback titles to standard anthologies; others, who may have to be more inventive (or devious) given budgetary contraints, zerox what they need to teach or share a few dog-eared copies of a selection, scotch-tape and all. As if problems with publishers weren't enough to send most English teachers into early retirement or plain resignation, the Eagle Forum and its ilk continue their censorship attacks.

At home, downstate in Illinois, I am depressed with the news of a nearby school district's wholesale adoption of the Eagle Forum's manifesto, during the summer when vigilant teachers were absent, for example. To provide some help for those similarly beset, in October 1985 SLATE issued some guidance for schools and teachers who must deal with the Eagle Forum and the Maryland Coalition and their use (or misuse?) of the 1978 "Hatch Amendment." SLATE said, "In the minds of some misinformed parents [and, I might add, some misinformed school boards], classroom discussions [of such things as the suicides in Romeo and Juliet] is prohibited under recent Federal statute, unless the school has sought and secured prior parental consent for each student who might be party to such discussion. Under similar proscription, many have been led to believe, are such classroom activities as role-playing, writing autobiographies, keeping daily journals, and taking part in 'open-ended discussions of situations involving moral issues.' The Hatch Amendment to the General Education Provisions Act is the statute of record, cited in model letters that have been distributed to the hundreds of thousands of parents." Although the Hatch Amendment was passed over five years

and "evoked little discussion among educators, pressure groups saw considerable potential in it for "restricting the school curriculum and controlling teaching methods." SLATE explains what the Hatch Amendment actually includes and what the Department of Education regulations permit, and notes the ambiguities. Perhaps because of its very ambiguities, activist groups have complained that "the Hatch Amendment regulations . . . are much too weak and limited in several respects." To remedy those problem areas, the March 1985 issue of the Phyllis Schlafly Report urged passage of a Pupil Rights Amendment in every state (for the Hatch Amendment covers only federally funded courses.) Indeed, such bills have been introduced--notably in Illinois, California, and North Carolina. Although as yet these efforts have not met with success, only the governor's veto prevented such a bill from becoming law in Arizona.

So, where are we now--in November 1985? What is the state of the "most beautiful thing in the world"? Unfortunately for our students and for us, the effects of expurgated texts, ambiguous court decisions, and pressure groups of all kinds have led, in all too many instances, to restricted curricula. Fear of censorship leads to self-censorship of the most terrified variety. For those cowering souls, I can only recommend daily reading of the Students' Right to Know. For those of us still brave--perhaps because we grew up in LaFollett country and cut our teeth on the Capital Times (Madison) whose masthead proclaimed "Give the people the truth, and the truth shall make them free," the remedy is less clear. Reminded daily of the erosion of what we believe to be a fundamental right, we begin to wonder. Item: Solicitor General Charles Fried's attack on the press last Tuesday (Nov. 19, 1985) for "distorting" Edwin Meese's position on advocacy of a "jurisprudence of original intention" by Supreme Court jurists; that is, the press's focusing too heavily on the Attorney General's references to the Bill of Rights. Item: Phyllis's newspaper ad for her book, Child Abuse in the Classroom, with the provocative headline, "Mommy--Guess What We Learned in School Today?" Words and actions such as these can give anyone the jitters!

Once again I, too, must turn to the The Students' Right to Read (1972 ed.).

Its words strike clearly, cogently:

> Aware of the vital role of literature in the education of mankind, English teachers have unique responsibilities to their students and to adults in the community. To their students, they are responsible for knowing many books from many cultures, for demonstrating personal commitment to the search for truth through wide reading and continual critical questioning of their own values and beliefs, for respecting the unique qualities and potential of each student, for studying many cultures and societies and theii values, and for exhibiting the qualities of educated people. To adults, they are responsible for communicating information about their literature programs, for explaining, not defending, what books they use with what students, for what reasons, and with what results; and for communicating the necessity of free inquiry and the search for truth in a democratic society and the dangers of censorship and repression.

Armed with these wise words, I embrace once more my faith in the "most beautiful thing in the world"--freedom of speech--and vow to defend it at all costs.